

appointees atop these agencies with the design that the institutions remain responsive to the political will of the people, as expressed through permitted political activity.

Inherent in these notions of how government works is the expectation that those who petition the government for official action will receive fundamental fairness. Equality of access to government decision-makers cannot always be guaranteed and governmental processes are not always perfect decision-making systems, but the normal administrative process “tends in the long run to produce better policies than would a system in which all decisions are made according to the wishes of the highest bidder.”⁷²⁹ In our system of privately financed political campaigns, however, these principles of fairness can collide with the appearance that campaign contributors are given preferential treatment in particular administrative matters. Because the public expects and the law requires that agency decisions are not for sale, even the mere appearance of such influence undermines the effective functioning of government and the public’s confidence in it.

Along the spectrum of proper to improper influences on agency decision-making, bribery is the clear and extreme example of prohibited activity. Bribery is a “despicable act” that strikes “at the root of fairness and democracy,”⁷³⁰ at the integrity of the entire administrative process, and at public respect for and confidence in its government. But, as will be more fully developed below, the federal bribery law has strict proof requirements that limit its reach, particularly when applied to conduct involving campaign contributions.

⁷²⁹Daniel H. Lowenstein, *Political Bribery and the Intermediate Theory of Politics*, 32 UCLA L.Rev. 784, 804 (1985).

⁷³⁰*Id.* at 843-50.